

1 from the parent company to ISIS.

2 All items were reviewed by the evaluators and scored  
3 accordingly. The State found no misrepresentation in the  
4 documents provided by ENA. ISIS did not provide all of the  
5 required documents.

6 MR. LEE: Do you know what the scores were in  
7 that area?

8 MR. NEY: They were 1.75 --

9 MR. LEE: I was thinking it was --

10 MS. COTTRELL: It was 1.75 for ENA and 1.5 for  
11 you.

12 MR. LEE: So ENA got 1.75 and ISIS got 1.5?

13 MS. COTTRELL: Out of two.

14 MS. SHRAGO: I'm ready to go on to Item No. 3.

15 The legal status of ENA to participate in this process is  
16 questionable. The legal existence of ENA has always been valid  
17 and is valid now. The Secretary of State's Office is required  
18 by law, per the attached affirmation confirmation letter that  
19 we got, it is. It is always possible for us to get an opinion  
20 from a reputable counsel if this is sufficiently accurate.  
21 Obviously the reviewers are not counsel, any questions?

22 COMMISSIONER HAWKINS: Any questions on that?

23 MR. LEE: No

24 COMMISSIONER HAWKINS: No.

25 MS. SHRAGO: Now Item No. 1, ENA failed to

1 complete the required test. In the report to Commissioner  
2 Walters in response to the letter of protest, we describe the  
3 specific tests that we asked the proposer to perform. You will  
4 note that we did most of the testing in a school, using  
5 students and teachers in a Nashville school where we used  
6 classroom computers and a school network.

7 \* We did this because we think while there are lots of  
8 technical ways to evaluate vendors providing Internet service,  
9 it is most important that we operate from the perspective of  
10 our students and the typical school environment. The rationale  
11 for the demonstration test, in student terms, was to assure  
12 that the students wouldn't have to wait too long as they are  
13 now waiting to see the picture or information emerge on the  
14 computer screen. When they requested from an Internet site,  
15 that is simply what we were doing.

16 If students have to wait too long, teachers won't use it as  
17 a means of instruction or if the sites just don't show up  
18 because it is timed out, the students get frustrated.  
19 Therefore, the RFP states the criteria that if a proposer  
20 demonstrates that they can deliver the service on the State  
21 network, which was tested on the line, and they can deliver it  
22 equivalent to the time that the students wait now or less, test  
23 two, then the proposer meets the criteria as defined in the  
24 RFP.

25 The purpose as it was stated in our report was it proposes

1 and offers equipment in communication lines that are currently  
2 on the market and it provides equivalent functionality to the  
3 existing network. The State determined that ENA and ISIS2000  
4 met the requirements for the RFP, for the demonstration test,  
5 both were told this information on the day of the test,  
6 Saturday March 2nd.

7 Further in the RFP Section 3.5 it stated that the use of  
8 the terms must, shall, will, should indicate a specific  
9 requirement that the State considers essential. Further we  
10 stated their failure to adhere to this definition may result in  
11 bidder disqualification. We determined that neither proposer  
12 should be disqualified and that neither should lose any points  
13 in the evaluation.

14 Basically what we are asking was the demonstration fair to  
15 both vendors. We believe it was fair to both vendors. We, for  
16 example, did not require that ISIS have a Frame Relay Service,  
17 which will be used by 100 percent of the schools installed at  
18 that school site. That was not a requirement that day; they  
19 couldn't get it in on time.

20 Secondly, the question was did it meet the purpose of the  
21 test as described in the RFP. All of the reviewers felt that  
22 it did and we scored both proposers accordingly and gave them  
23 each two points. Do you have any questions about the tests?

24 MR. LEE: If you could just briefly describe --  
25 you-all used the school in Nashville and both proposers were

1 allowed to come in and set up their own equipment to do the  
2 test from, and them both were given the same amount of time to  
3 set up?

4 MS. SHRAGO: Yes.

5 MR. LEE: Was ISIS tested first; do you recall?

6 MS. SHRAGO: Yes -- no, excuse me. ENA tested  
7 first because they had requested that time first.

8 MR. LEE: In your letter, a memo to Commissioner  
9 Walters dated April 2nd, you said that they had requested three  
10 hours to perform the test and you-all gave them 1.5 hours?

11 MS. SHRAGO: That is right.

12 MR. LEE: How long was ISIS given; do you  
13 recall?

14 MS. SHRAGO: Two hours.

15 MR. LEE: And the 60 computer test, ENA did not  
16 do that test; is that correct?

17 MS. SHRAGO: That is correct, at our request.

18 MR. LEE: And ISIS did that test and there was  
19 some concerns?

20 COMMISSIONER HAWKINS: According to this neither  
21 vendor completed the 60 test.

22 MS. SHRAGO: They did that test but it was in  
23 four minutes and 47 seconds, which was 39 percent longer than  
24 the benchmark.

25 MR. LEE: That is the 60 computer?

1 MS. SHRAGO: That is right.

2 DEPUTY COMMISSIONER JONES: Why was the decision  
3 made, Ms. Shrago, not to have ENA complete the 60 minute test?

4 MS. SHRAGO: We just simply thought that we had  
5 sufficient information that proved that their equipment and  
6 lines worked. We did not think that another test, at that  
7 stage, would add much to the process. We were very worried  
8 about being able to get done that day.

9 As I said, we cut them to an hour and a half so that left  
10 us two hours with the other vendor. I suspected that if we had  
11 given ENA two hours to pass, there is no doubt that they would  
12 have been able to complete it. At that moment I did know for  
13 certain that was how that was going to work. It was just a  
14 real live -- we had 60 people.

15 Basically, you understand that ISIS failed the 60 computer  
16 test; they did not meet the criteria as specifically stated in  
17 the RFP. They didn't meet it and ENA didn't do the test so we  
18 basically threw out those two results and used the other two  
19 tests as a functional basis for saying it met the  
20 qualifications.

21 MR. LEE: So both parties were given the maximum  
22 points?

23 MS. SHRAGO: Yes.

24 MR. LEE: That is all of the questions I had on  
25 that point.

1 COMMISSIONER HAWKINS: Ed, do you have anything?

2 DEPUTY COMMISSIONER JONES: Nothing on that  
3 subject.

4 MS. SHRAGO: Finally, Item No. 5. ENA  
5 apparently failed to submit cost data in a sealed envelope.  
6 There is a page that is labeled, reviewer questions for ENA  
7 response to RFS 97-2, March 10, delivered by E-mail with  
8 confirmation phone call to Jackie Shrago. It was the heading  
9 on the documents that I provided to ENA to obtain responses to  
10 questions that the reviewers had on the RFP; that was the  
11 heading on the document.

12 I will certify in a court of law; I will sign an affidavit;  
13 I will do whatever it is that you want me to do. I did not  
14 receive cost information, other than in the sealed envelope  
15 which was not opened until March 18, as required in all our  
16 documentation.

17 There were three of us that watched it being opened. I had  
18 no other cost information from them. I can't explain a copier  
19 that has dark copies. I can tell you that the pages on the  
20 question part were in blue. The cost information was not in  
21 blue and it was not in that document.

22 MR. LEE: So there was three people that opened  
23 the costs together?

24 MS. SHRAGO: Yes, sir.

25 MR. LEE: Which were?

1 MS. SHRAGO: Norris Hoover, myself, Tom  
2 Bayersdorfer. We signed and dated the evaluator form that  
3 indicated at that point that we had transferred the points from  
4 each reviewer's individual sheet on to a common sheet so they  
5 could be averaged. When we completed that task, we signed and  
6 dated the form that was in the bid file and that was made  
7 available to everybody.

8 I think the issue is whether I got it by E-mail, okay? I  
9 will certify to you that I did not get it on E-mail. I will  
10 sign it on a stack of Bibles; I will sign an affidavit or  
11 whatever you need from me, sir. That envelope remained sealed  
12 in the Commissioner's office until we opened it.

13 COMMISSIONER HAWKINS: Do you have any  
14 questions?

15 DEPUTY COMMISSIONER JONES: Are you completed  
16 with your presentation?

17 MS. SHRAGO: Yes.

18 DEPUTY COMMISSIONER JONES: You have done an  
19 excellent job of responding to these issues that have been  
20 raised; therefore, I don't have as many questions as I  
21 originally did. I do have one, though. You mentioned that, of  
22 course, this program, the E-rate program, is in its infancy but  
23 there was some documentation that was provided by Mr. Ney and,  
24 I think, it was an excerpt from some of the FCC's communication  
25 or their policies. It said that the original purchase date of

1 service, delivery date, will govern for purposes to determine  
2 whether service was provided on or after January 1 and dealing  
3 with the payment for and the equipment and that this equipment  
4 was to be installed new, not used, prior to January 1. Is this  
5 \$7,500 purchase of this existing routers and system, is that  
6 going to be an expense that is going to be allowed by the FCC?

7 MS. SHRAGO: First of all, I'm not in a position  
8 to answer that; the FCC will ultimately answer that. I can say  
9 this to you, that it is a very clear argument which our FCC  
10 attorney has heard and says has merit is that ENA in offering a  
11 service that was to be delivered July 1, had to have something  
12 in place to make that offering part of its bid.

13 Their alternative in not purchasing our network would be to  
14 go out and purchase routers, obtain all of the communication  
15 lines, get them installed and get them operating in essentially  
16 a two month period. I believe that that cost could easily be  
17 \$10 to \$12 million given the shortness of the time frame.

18 I know how long it took us to get them installed to begin  
19 with, and it is not easy. It is not just the cost of the  
20 equipment; it is the cost of the installation; you are talking  
21 about high powered engineers in a very short period of time.

22 DEPUTY COMMISSIONER JONES: Do you feel like  
23 because of this short time stipulation that the FCC will  
24 grandfather the State into this program with the existing  
25 program?



1 MS. SHRAGO: Mr. Jones, as I stated earlier, I  
2 believe that what we have in front of us is a vendor who could  
3 not and did not respond to the RFP and is threatening us with  
4 the FCC action, and obviously has filed it, and therefore hopes  
5 that we would continue our existing contract with them.

6 DEPUTY COMMISSIONER JONES: Okay.

7 COMMISSIONER HAWKINS: Any questions?

8 COMMISSIONER WALTERS: Yes. I realize that only  
9 the FCC can answer this, but with the objection that was filed,  
10 I believe on Friday, that as you understand it, that  
11 effectively knocks us out of any '98 funding; is that correct?

12 MS. SHRAGO: It is a very, very good possibility  
13 that that is the case and it jeopardizes certainly 1999  
14 funding, too.

15 DEPUTY COMMISSIONER JONES: Could you repeat  
16 that, please? What was the objection that caused this?

17 COMMISSIONER HAWKINS: The filing by ISIS with  
18 the FCC on Friday.

19 COMMISSIONER WALTERS: As I understand from what  
20 I know, which is not as an expert, the filing of that because  
21 of the time that it takes to deal with it, we --

22 MS. SHRAGO: Declaratory rulings can take easily  
23 a year's time.

24 COMMISSIONER WALTERS: We are, in my mind,  
25 clearly out of the '98 funding and I suspect out of the '99

1 funding.

2 MR. LEE: This contract will only cover the  
3 proposal for '98?

4 MS. SHRAGO: No, this is a three and a half year  
5 contract.

6 MR. LEE: If that is the case, if the State did  
7 a proposal in April to the federal government and it was held  
8 that we don't get any of the funding, this contract will still  
9 be binding?

10 MS. SHRAGO: Uh-huh.

11 MR. LEE: We will just not get any funds from  
12 the federal government?

13 MS. SHRAGO: Yes.

14 DEPUTY COMMISSIONER JONES: Are the applications  
15 made annually?

16 MS. SHRAGO: Yes.

17 COMMISSIONER WALTERS: But the '99 deadline is  
18 July 1.

19 MS. SHRAGO: Because then it moves to a first  
20 come, first serve fund.

21 COMMISSIONER HAWKINS: After April 15?

22 MS. SHRAGO: Yes.

23 COMMISSIONER HAWKINS: Of the current year  
24 funding?

25 MS. SHRAGO: Right, then it moves to a first

1 come, first serve fund. There is a very significant advantage  
2 to getting it on the first day of the year, the next period.

3 COMMISSIONER WALTERS: Again, this is all  
4 speculation, but in the meetings that I have had with chief  
5 state school officers, we are perfectly aware that the States  
6 of Texas and New York will clean out the fund. Therefore, if  
7 something is cleared up by August 1, it will be moved. The  
8 bottom line is the children of Tennessee are the losers.

9 DEPUTY COMMISSIONER JONES: Ms. Shrago, I don't  
10 know if this question should be answered by you, as an  
11 evaluator or by ENA when the appropriate time comes. I was  
12 wondering if you might make this committee a little more  
13 comfortable with the financial situation of ENA with the  
14 assumption that there is a \$5 million letter of credit from  
15 First Tennessee Bank, based upon collateral and security being  
16 developed. I'm assuming that the State's system would be the  
17 collateral and it would be filed against that?

18 MS. SHRAGO: Yeah, I think there is ample  
19 evidence that there is collateral to support a line of credit.

20 DEPUTY COMMISSIONER JONES: But with that in  
21 existence, you have got \$5 million and then you have \$1.5  
22 million in notes or accounts receivable, whichever it is. I  
23 guess ENA would have to pay 7.5 million on the front end, but  
24 it looks like there is a \$1 million shortage there to make that  
25 happen, unless there is a cash flow situation where \$1 million

1 comes back in that first month in billings in excess of that?

2 MS. SHRAGO: There are several issues there,  
3 Mr. Jones.

4 DEPUTY COMMISSIONER JONES: I just wanted to  
5 know if you were comfortable with that situation and you might  
6 make us understand how this is going to be cash flowed?

7 MS. SHRAGO: First of all, the teaming  
8 arrangement, I think clearly indicates strong participation of  
9 the team members and I suspect a 30 day delay in payment of  
10 purchase is easily possible. While we didn't receive this in  
11 the documents, I can also anticipate that it could easily be  
12 longer than that. Clearly there is a 30 day issue there, and  
13 we looked at the cash flow and thought that it was all  
14 feasible.

15 MS. COTTRELL: We are ready to answer any  
16 questions that you-all may have about that.

17 MS. SHRAGO: Since then I have talked to ENA's  
18 banker who is here this morning that signed that letter.  
19 Again, that is something I have done since this issue was  
20 raised, but we had a lot of confidence before based on the  
21 documents that we had in front of us.

22 DEPUTY COMMISSIONER JONES: Thank you.

23 COMMISSIONER HAWKINS: One more question, again,  
24 help me to better understand that gap between the 51 million  
25 and the 73 million. I keep going back to this six month

1 calculation there, I mean, that has some impact in the total  
2 and what impact did that have on the total outcome of the cost  
3 proposal; did it close that window?

4 MS. SHRAGO: It entirely closed the entire  
5 window.

6 COMMISSIONER HAWKINS: So we really don't have a  
7 23 or 24 million differential based on that calculation?

8 MS. SHRAGO: That is correct.

9 DEPUTY COMMISSIONER JONES: Based on their  
10 proposal?

11 MS. SHRAGO: Yes.

12 MR. NEY: That is not the proposal. It was a  
13 response; the proposal is a separate document. The cost  
14 proposal is not what Ms. Shrago has been talking about. She  
15 has never called it the cost proposal; she has always referred  
16 to it as what it was. The document that you put up there is  
17 not the cost proposal.

18 MS. SHRAGO: No, but my judgment was based on  
19 the cost proposal.

20 MR. NEY: I understand, but I want to make sure  
21 that they understand that they are two different documents.

22 COMMISSIONER HAWKINS: What I understand is one  
23 was 73 million and one was 51 million?

24 MS. SHRAGO: Right. When you look at the  
25 difference between them, it is the other document that has the

1 discrepancies of the dollars. The problem with this document  
2 is that when you look at the details, you can't see how to get  
3 to one number to another.

4 COMMISSIONER WALTERS: What was the document  
5 that you had blown up?

6 MS. SHRAGO: That was the supplemental cost  
7 information.

8 COMMISSIONER WALTERS: That was a  
9 clarification?

10 MS. SHRAGO: Yes, a clarification.

11 COMMISSIONER WALTERS: In other words --

12 MS. SHRAGO: I assume it is part of the cost  
13 proposal.

14 COMMISSIONER WALTERS: But that was their  
15 response to the questions for clarifications?

16 MS. SHRAGO: Yes, ma'am.

17 COMMISSIONER WALTERS: So that was not -- in  
18 other words, they had that separately?

19 MS. SHRAGO: Yes, that is the document that was  
20 asked for after the initial cost proposals were submitted in  
21 their sealed envelopes. It, too, was submitted in a sealed  
22 envelope so that when we opened the cost information on the  
23 18th, there were two packages from each vendor. One was  
24 delivered to us prior to February 27th and one was delivered, I  
25 believe, on Monday, March 10th.

1 COMMISSIONER WALTERS: But when they responded,  
2 they were on notice that you were asking for additional  
3 clarification?

4 MS. SHRAGO: That is correct.

5 DEPUTY COMMISSIONER JONES: Was it labeled as  
6 such?

7 MS. SHRAGO: Yes. In fact, that sheet that  
8 Mr. Ney raised a question about, that was the actual envelope  
9 that it came in, okay; that was the envelope.

10 COMMISSIONER WALTERS: My concern is that I can  
11 easily understand an error on a spreadsheet. I have more  
12 difficulty understanding an error when you are on notice that  
13 you are being asked to clarify what you said; I think that is  
14 my problem. That is why I did not realize where this was.

15 MS. SHRAGO: Right.

16 COMMISSIONER HAWKINS: Any more questions for  
17 Ms. Shrago?

18 DEPUTY COMMISSIONER JONES: No.

19 COMMISSIONER HAWKINS: We need to take a short  
20 break. It is 11:05 and we will try to resume at 11:15.

21 (Whereupon, a short recess was taken at 11:05  
22 a.m.)

23 (Whereupon, the following proceeding resumed at  
24 11:15 a.m.)

25 COMMISSIONER HAWKINS: Okay. We were finishing

1 up with Ms. Shrago; do you have anything further?

2 MS. SHRAGO: Yes, I want to make one point of  
3 clarification because I think I badly misstated something about  
4 the FCC business. I do not believe that the filing that was  
5 done on Friday will totally invalidate our application. I  
6 think it will call into question the \$7.5 million, but the rest  
7 -- the way the forms are laid out, and I should have realized  
8 this because we literally created the form that they are using,  
9 there are levels of services that one can specify. The SLC has  
10 decided that they may pull one item and rule it as questionable  
11 eligibility, but it will not invalidate every other item that  
12 is on the form.

13 So I don't believe there is any question that our level  
14 service one, which is Internet access which is essentially the  
15 \$5 million, will be eligible. Which means that we should have  
16 at least -- if we were dealing with an annual basis, we would,  
17 at least, be able to get \$10 million. It may be that there are  
18 some other items; I just don't remember very precisely how we  
19 might lay that out.

20 In the response those items are separate and the rules  
21 clearly indicate that eligibility will be defined separately.  
22 So it doesn't invalidate the whole thing. It doesn't  
23 invalidate the whole thing at all; it doesn't call into  
24 question every element of the form.

25 COMMISSIONER HAWKINS: Any questions?



1 DEPUTY COMMISSIONER JONES: No.

2 COMMISSIONER HAWKINS: It would be, I believe,  
3 at this point being that this is a protest between the State  
4 and the protester, it would normally go back to Mr. Ney. I  
5 believe I said in my order of presentation that ENA would  
6 present following the Department of Education. I would like to  
7 reverse in that those are the issues here and whatever comments  
8 in the presentation made after they are finished, as the  
9 winning bidder, that if we could take it in that order; is that  
10 fine?

11 MS. COTTRELL: That is fine.

12 MR. NEY: What was that? I just fundamentally  
13 would like to be able to respond to anybody who speaks since we  
14 carry the burden ultimately so if I have to wait.

15 COMMISSIONER HAWKINS: I have no problem with  
16 that, Mr. Ney.

17 MR. NEY: Fine, I was not sure how you were  
18 going to do it.

19 MS. COTTRELL: Do you want me to go?

20 MR. NEY: I don't care.

21 COMMISSIONER HAWKINS: We are not denying you  
22 any right to respond to anyone, Mr. Ney.

23 MR. NEY: I understand. I just wanted to make  
24 sure that I understood what we were doing.

25 COMMISSIONER HAWKINS: You are protesting

1 against the State. I was trying to correct the order of  
2 presentation under advisement. However, in light of that  
3 protocol, ENA, it is your call.

4 MS. COTTRELL: Education Networks of America was  
5 awarded this contract subject, of course, to the rights of this  
6 protest. And Education Networks of America, ENA I will call it  
7 from now on, is, in fact, very proud to have this contract  
8 awarded to it and very proud of its proposal.

9 You-all received in substance the proposal in its bound  
10 version. It was submitted to the State in both the technical  
11 proposal and the cost proposal. Two proposers were submitted  
12 and two proposers were eligible to be evaluated. And the  
13 proposals were evaluated as shown on this chart. This is  
14 merely a chart which takes a little bit longer, more  
15 detailed --

16 COMMISSIONER HAWKINS: This will be Exhibit 5?

17 MS. METCALF: Yes.

18 (Whereupon, the aforementioned document was  
19 marked as Exhibit No. 5.)

20 MS. SADIE ROSSON: Who prepared this?

21 MS. COTTRELL: I did. This simply is just a bid  
22 that summarizes what is in the part of the bid file that shows  
23 each evaluators results. I think it is significant, though,  
24 for you to keep in mind as you go through this as to what the  
25 total points were that were available for each part of the RFP,

1 and how those points were allocated. Every evaluator rated  
2 ENA's proposal as technically superior; their qualifications  
3 and experience as superior; and their cost proposal as  
4 superior, according to the cost proposal methodology.

5 In its protest ISIS has not challenged the points that  
6 were awarded to ENA. In its protest ISIS has not challenged  
7 the methodology for the award of points. In its protest ISIS  
8 has not challenged the methodology in theory. As you-all know,  
9 the cost proposal, for example, the RFP set out how the points  
10 would be allocated among the major categories and how the cost  
11 formula model would work. They haven't protested any of that.

12 ENA has submitted a complete and detailed proposal that  
13 meets every requirement of that RFP; therefore, the award to  
14 ENA must be sustained. Let me give you a couple of examples of  
15 areas where ENA's proposal is clear and thorough. For example,  
16 I think Ms. Shrago went through this to some extent. The RFP  
17 states that the proposer must clearly show the capacity that  
18 must be provided through State and local recurring funds and  
19 the amount of State and local agencies paid for these services.

20 The RFP services should also be identified which will be  
21 provided as a result of eligibility and funding from the FCC  
22 E-rate fund. The proposer must clearly identify the capability  
23 that will be provided for every period, that is a six month  
24 period according to the spreadsheet thing in the back, through  
25 the life of the contract if the E-rate funding is not available

1 in any period.

2 ENA submitted, as shown by these tabs, for every six month  
3 period a spreadsheet showing E-rate funding and no E-rate  
4 funding. ISIS did not submit that information as was requested  
5 in the RFP.

6 I think most significantly the thing they did not submit,  
7 however, was a spreadsheet, a cost proposal if you will; a  
8 proposal that can be accepted by the State. That shows what  
9 happens when there is no E-rate funding. That simply was not  
10 submitted by ISIS and, I believe, that is noted in the  
11 evaluator's comments on the evaluation of the cost proposal.

12 Let me tell you why that is significant. The State has a  
13 certain amount of money that it currently spends for ConnectEN  
14 and that is all the State wants to continue to spend, absent  
15 some other money coming in. So the State, first and foremost,  
16 wanted a contract to what can you give us without E-rate  
17 funding. As Ms. Shrago went through whether it is going to be  
18 around and how long it is going to be around is not something  
19 that is determined or determinable.

20 So the State had to contract, first and foremost, for what  
21 it could get for the amount of State money that it has and/or  
22 can receive that would be eligible to spend on ConnectEN.  
23 There is simply no cost proposal from ISIS that makes the State  
24 an offer for what would happen in that situation. Therefore, I  
25 would submit, as we raised in our response, there is simply no

1 way that the State could enter into a contract with ISIS.  
2 The basic service for which the State would be contracting is  
3 simply not quoted to you as a proposal.

4 I am going to -- in the interest of time and because Ms.  
5 Shrago was so thorough in many of her approaches, I'm going to  
6 eliminate some of the ones that I was going to talk about. I  
7 do think it is important, again, that in its protest, and this  
8 is our response to the protest and it is not listed as a  
9 protest item; ISIS has claimed that its proposal is technically  
10 comparable to ENA but would cost million dollars less.

11 They have also used that in the proposal. Only now it is  
12 not a draft anymore, an FCC filing that they have made a  
13 proposal for comparable services for less money. In fact, if  
14 you look at this chart, none of the evaluators thought their  
15 services were comparable. They, in fact, got an average out of  
16 the 45 points that are available, maximum points for technical  
17 approach. ENA got an average score of 35.375 and ISIS got a  
18 score of 26. That means that the evaluators, looking at the  
19 technical proposal, decided that ENA's proposal was  
20 significantly 45 points better.

21 That difference in the rating is justifiable for a number  
22 of reasons, many of which Ms. Shrago has gone through and I  
23 will not duplicate. Essentially one of the issues that it is  
24 different is if you will look at -- we have a blow up  
25 somewhere. Wait I have it -- no, it got moved.

1           On Page 10 of ISIS' clarification to their technical  
2 proposal. Again, they were asked to clarify a number of  
3 issues. If you read those questions and read those  
4 clarifications, it is fairly revealing about some of the  
5 confusion that the State had in trying to determine those  
6 items; that is the schematic. ISIS was asked to present a  
7 detail schematic of the relationship of all of the existing  
8 elements and the proposed elements of the network. \*

9           This is the schematic that they presented showing the  
10 difference between the existing configuration and their  
11 proposed configuration. The proposed configuration is  
12 different from their optional configuration and I'm not going  
13 to talk about that; we will just use the proposed  
14 configuration.

15           You will see that they proposed to connect directly to the  
16 Internet the extra-large and large schools. That is 100  
17 extra-large and 300 large schools. They intend to do that  
18 immediately and part of their optional proposal is to, in fact,  
19 move into more of the schools.

20           They proposed not to allow our backbone -- they call that  
21 one-hop access to the Internet. Well, unfortunately, what you  
22 may do when you make one hop to the Internet as you hop over  
23 all of those services that, I think, Ms. Shrago has talked  
24 about the caching, the filtering for content, which is becoming  
25 critically more important and the security issue are currently

1 being dealt with, either through the State backbone or through  
2 the county, they intend to eliminate.

3 The problem is, they haven't shown anywhere on here where  
4 those capabilities would be replaced with this jumping from the  
5 school directly to the Internet. So I can see where it would  
6 be very different for the State evaluators to figure out where  
7 those services that are included in ENA's proposal would be  
8 coming from and how they would be provided.

9 As we said, and, again, I'm being very brief because I  
10 think a lot of this has been covered and because I know some  
11 people have timelines they have to get out of here for. The  
12 proposals, the technical solutions, are not technically  
13 comparable. The Department of Education on behalf of the  
14 schools of Tennessee, and they are acting as representatives of  
15 a consortium of schools that is the department's role in this  
16 whole thing, has the right to seek the best technical solution  
17 it can get.

18 The RFP process specifically envisions and is specifically  
19 designed to allow the State to seek the best solutions, to seek  
20 and to award points on the basis of the quality of the product  
21 of the service that is going to be delivered. Therefore, ISIS'  
22 statement in both the protest and the FCC filing that their  
23 proposal is technically comparable are simply not accurate.  
24 They were not evaluated as accurate by all four of the  
25 evaluators who looked at this, whom, I know, are very

1 technically competent to assess that.

2 We also submit that the second part of that statement is  
3 not accurate. For the simple reason that the cost proposal  
4 that ISIS has presented is so flawed that the difference in  
5 cost can't really accurately be ascertained between the two  
6 proposals. In any event, we submit that difference is  
7 unrelated to the protest items.

8 The difference in cost, even if it were accurate, is not  
9 debatable for a protest or for it overturning the award of the  
10 contract to ENA. The proposal process, again, specifically  
11 recognizes the State's need and the State's rights to consider  
12 quality of services offered as more significant than cost.  
13 When this RFP went out, it was clear that cost was 30 percent  
14 of the award.

15 The RFP clearly showed how all of the elements would be  
16 computed and the State evaluators clearly followed the RFP.  
17 They did what it said it was going to do. ENA filed a proposal  
18 that met all the requirements and was evaluated exactly the way  
19 the State said it was going to be evaluated.

20 I would like to address a couple of the specific things  
21 with regard to the legal existence of ENA as an entity. You  
22 have been provided a certificate of existence from the  
23 Secretary of State's office. As Mr. Ney said, the certificate  
24 of existence is conclusive evidence of the existence of ENA.

25 ENA, itself, as an LLC isn't stopped from denying its



1 existence to any third party. There is no legal requirements  
2 for any writing or for public filings with regard to LLC. We,  
3 essentially, object to Mr. Ney's characterization as we have  
4 somehow misrepresented the existence of ENA, particularly,  
5 based upon Mr. Ney's telephone call to a college student about  
6 her father.

7 Based on the certificate of existence, that the Secretary  
8 of State of Tennessee has issued, we submit that is really not  
9 an issue here; it is mere speculation on behalf of ISIS.  
10 With regards to the sealed envelope issue, ENa submits it  
11 provided the cost proposal clarification in a sealed envelope;  
12 that is all we can say about that.

13 Let me speak briefly to the E-rate funding issue, but not  
14 much I assure you. As it has been said, the FCC has issued a  
15 lot of new things. They have issued lots of instructions and  
16 orders and rulings, but there are no rulings yet on the precise  
17 issues that have been raised by ISIS, as far as I know.  
18 And as Mr. Ney said, until it is an order, nobody knows exactly  
19 what it means. But luckily this committee doesn't have to sit  
20 as the FCC and make a decision on that.

21 I think that would be relevant to your decision is whether  
22 the State has acted responsibly, whether the State has examined  
23 these issues and whether the State has acted with advice and  
24 expertise in the area. We have been told that that, in fact,  
25 is the case.